

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

WRIT PETITION NO 4704 OF 1992

Purshottam Ambadas Joshi,
since deceased by his/LRs.

1. Smt. Sulochana P.Joshi
2. Shri Govind P. Joshi
3. Kumari Charusheela P. Joshi
residing at Room No.4, ground floor,
Krushna Kunj, Prashant Nagar,
Near Naupada Police Station, ..Petitioners.
M.G. Road, Napuada, thane.

Vs.

Smt Satyabhama Ramchandra Luman,
since deceased by her L/Rs.

Arvind amchandra Luman,
residing at Krushna Kunj,
Prashant Nagar, near Naupada-
Police Station, M.G. Road,
Naupada, Thane. .. Respondent

None for the petitioners.
Ms. Gauri Godse for the respondents.

CORAM : ANOOP V.MOHTA J.

DATE : 13TH JULY, 2005.

ORAL JUDGMENT

. Heard Ms. Gauri Godse, advocate for the
respondents. None appeared for the petitioners.

. Whether the suit is maintainable under the
Bombay Rents, Hotel and Lodging House Rates (Control)

Act, 1947,(for short Bombay Rent Act). The original defendants-petitioners herein, prayed for framing of the above preliminary issue, by an application, in Reg. Civil Suit No.236/1983, filed by the respondents-plaintiffs and insisted for the dismissal of the suit.

. The learned Judge, after considering the rival contentions, by an impugned order dated 19/9/1992, rejected the said application, rightly so as there is nothing, which would prevent the parties to file a suit for bonafide need taking shelter of section 13(1)(a) for use of residential premises for non-residential purpose. The prayer of dismissal of the suit, as per the preliminary issue, as referred above, in no way be taken note of at this stage. The learned Counsel appearing for the respondent, rightly pointed out that at the most, suit would be dismissed on merit on this ground. There is no question of deciding this issue, as a preliminary issue and for deciding maintainability of the suit, without leading evidence in the matter.

2. In the facts and circumstances of the case, and looking to the nature of the dispute between the

parties, that relates to the landlord tenant relationship, such application by the defendant is nothing but a tactics to delay the eviction proceeding. The learned Judge, according to me, is right in rejecting the said application.

3. The reasoning given by the learned Judge, in the impugned judgment and in view of the submission made by the Counsel, appearing for the parties, I see, there is no case made out to interfere with the said finding. The Writ Petition against such interlocutory order is therefore, accordingly dismissed. Rule discharged. The suit NO. 236/1983 is expedited. No order as to cost.

[ANOOOP V. MOHTA, J.]